

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6106

PETITION OF 5810 C.A., LLC
(Hearing held November 30, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, January 19, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(1). The petitioner proposes the construction of an accessory structure/8.6-foot fence. Section 59-C-1.326(a)(1) requires that accessory structures are to be located in the rear yard only.

Yankel Ginzburg, who resides at the subject property, represented the petitioner at the public hearing.

The subject property is Lot P9, Block 27, Chevy Chase Subdivision, located at 5810 Connecticut Avenue, Chevy Chase, Maryland, 20815, in the R-60 Zone Tax Account No. 00455840).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of an 8.6-foot fence.
2. Mr. Ginzburg testified that the property has an existing 6.4 foot fence that was built by the prior owner. Mr. Ginzburg testified that the subject property is located at the intersection of Connecticut Avenue and West Irving Street. Mr. Ginzburg testified that the property has no rear yard and that the only way to have any privacy on the property would be with the construction of a taller fence.
3. Mr. Ginzburg testified that the property is unique because of the orientation of the house, the back yard/eastern section of the lot, and the side yard/northern section of the lot, are areas that are designated as front yards by the zoning regulations. Mr. Ginzburg testified that the

back yard for the property is located in lot's southern section and that it is actually a side yard and that the front yard for the property is located in the lot's western section. Mr. Ginzburg testified that Connecticut Avenue side of the lot is the property's rear yard, but it is considered a front yard by zoning regulations.

4. Mr. Ginzburg testified that house is constructed so that its first floor is higher than the first floor of neighboring homes and that the house was built 4 feet off of the ground, which results in the existing fence provide little or no screening on the property. Mr. Ginzburg testified that the property is located a block away from Chevy Chase Circle and that the proposed fence would screen the view of the traffic on Connecticut Avenue and provide some privacy on the property.

FINDINGS OF THE BOARD

Based upon the binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The need to create screening and privacy from the traffic conditions of a major highway on a particular piece of property are not conditions "peculiar" the property as required by the zoning regulations in the Board's evaluation of an application for variance. The Board finds that the impact of the traffic on the subject property does not restrict the use of the property and constitutes a factor external to the property itself, which is not a factor the Board may consider in considering an application for a variance. The Board finds that the applicant did not present any evidence supporting an assertion that the lot is unique under the requirements of Section 59-G-3.1(a).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance to permit the construction of accessory structure/8.6-foot fence in the front yard is denied.

The Board adopted the following Resolution:

On a motion by Angelo M. Caputo, seconded by Caryn L. Hines, with Donna L. Barron, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 19th day of January, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.